

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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JUN 12 2001

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Saddleback Communications)
and Qwest Corporation)
)
Joint Petition for Waiver of the Definition)
of "Study Area" Contained in Part 36,)
Appendix--Glossary of the Commission's)
Rules;)
)
Petition for Waiver of Section 61.41(c) and)
(d) and 69.3(e)(11) of the Commission's Rules)

CC Docket No. 96-45

JOINT PETITION FOR EXPEDITED WAIVERS

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June 12, 2001

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SUMMARY

Qwest Corporation (“Qwest”) has agreed to sell to Saddleback Communications (“Saddleback”) part of its Phoenix, Arizona telephone exchange located within the boundaries of the Salt River Pima-Maricopa Indian Community (the “Salt River territory”). The portion of the Phoenix exchange that Saddleback will acquire consists of approximately 2,700 access lines. By this Joint Petition for Expedited Waivers, Qwest seeks a waiver to delete the Salt River territory from its Arizona study area and Saddleback seeks a waiver to create a new study area for this territory. Additionally, Saddleback seeks a waiver of the Federal Communications Commission’s (“Commission”) Rule 61.41(c) so that it may be regulated under rate of return once it acquires the Salt River territory from Qwest. A waiver of Section 69.3(e)(11), if necessary, and as appropriate, is also requested in order to allow Saddleback to utilize the National Exchange Carrier Association as its tariff pool administrator.

Qwest and Saddleback respectfully request that the Commission expeditiously review and approve this Petition. This Petition raises no new issues of law, is supported by Commission precedent, and the facts involved in this Petition clearly demonstrate that the public interest will be served by an expeditious grant.

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JOINT PETITION FOR EXPEDITED WAIVERS

I. INTRODUCTION

Qwest Corporation ("Qwest") has agreed to sell to Saddleback Communications ("Saddleback")¹ part of its Phoenix, Arizona telephone exchange located within the boundaries of the Salt River Pima-Maricopa Indian Community² (the "Salt River territory"). The portion of the Phoenix exchange that Saddleback will acquire consists of approximately 2,700 access lines. By this Joint Petition for Expedited Waivers ("Petition"), Qwest seeks a waiver to delete the Salt River territory from its Arizona study area. Saddleback seeks a waiver to create a new

¹ Saddleback is a division of, and has been licensed by, the Salt River Pima-Maricopa Indian Community to provide local exchange services on tribal lands. In 1997, Saddleback invested in a state-of-the-art digital switching and transmission network in order to improve and expand basic and advanced telecommunications within the Salt River community.

² Salt River is a federally recognized Indian Tribe located east of Scottsdale, Arizona. The Salt River Community is bounded by the cities of Scottsdale, Tempe, and Mesa, Arizona, which make up part of the Phoenix metropolitan area.

study area for this territory. Additionally, Saddleback seeks a waiver of the Commission's Rule 61.41(c)³ so that it may be regulated under rate of return once it acquires this exchange from Qwest, as well as Section 69.3(e)(11),⁴ if necessary, and as appropriate, to allow Saddleback to utilize the National Exchange Carrier Association ("NECA") as its tariff pool administrator.

The Commission should move expeditiously to review and approve this Petition.⁵ This Petition raises no new issues of law, and the facts involved in this

³ See 47 C.F.R. § 61.41(c).

⁴ See 47 C.F.R. § 69.3(e)(11).

⁵ The Commission may exercise its discretion to waive a rule where particular facts would make strict compliance inconsistent with the "public interest." In the Matter of Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation, Order on Reconsideration, 7 FCC Rcd. 4355, 4364 n.118 (1992) citing to Wait Radio v. FCC, 418 F.2d 1153, 1159 (D.C. Cir. 1969), cert denied, 93 S.Ct. 461 (1972). Moreover, the Commission's responsibilities under the Federal Trust Doctrine further support the grant of the requested waivers. As a result of the unique government-to-government relationship between the Tribes and the Federal Government, the United States, and its agencies, are bound to protect the interests of the various tribes. See, e.g., United States v. Creek Nation, 295 U.S. 103, 109-10 (1935) (Governmental power to manage and control Indian property and affairs is not absolute, but is subject to limitation inherent in a guardianship.) This principle of Indian law "must apply with equal force in the area of telecommunications." In the Matter of Federal-State Joint Board on Universal Service: Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas, Further Notice of Proposed Rulemaking, 14 FCC Rcd. 21177, 21195-96 ¶ 38 (1999) ("Tribal Lands FNPRM"). The Commission adopted rules to promote telecommunications subscribership on tribal lands in the Twelfth Report and Order, 15 FCC Rcd. 12208 (2000). And see, In the Matter of Statement of Policy on Establishing a Government-to-Government Relationship with Indian Tribes, 20 Comm. Reg. (P&F) 1316 (2000) ("Policy Statement"). Thus, federal Indian law provides an additional basis under which the Commission must consider the requested waivers.

Petition are similar to those involved in similar waiver requests that have been recently approved.⁶

II. WAIVER OF THE PRICE CAP RULE'S "ALL OR NOTHING" REQUIREMENT AND "PERMANENT CHOICE" RULE IS IN THE PUBLIC INTEREST AND SHOULD BE GRANTED

The Commission's rules establish two primary regulatory regimes for the provision of interstate exchange access by local exchange carriers ("LEC") -- rate of return⁷ and price caps.⁸ Further, the Commission's price cap rules require that any non-average schedule company, when purchasing a price cap company or a portion of a price cap company, must then be subject to price caps.⁹ Moreover, the Commission's rules require that a company, once it has elected price caps, must continue under price caps.¹⁰ In the instant case, and in the absence of the requested waiver, Saddleback, a non-average schedule company, would be subject to interstate price cap regulation for its provision of exchange access because Qwest is currently

⁶ See, e.g., In the Matter of Citizens Telecommunications Company of Wyoming and Qwest Corporation Joint Petition for Waiver of the Definition of "Study Area" Contained in the Part 36 Appendix-Glossary of the Commission's Rules, CC Docket No. 96-45, Order, DA 01-410, rel. Feb. 16, 2001; In the Matter of All West Communications, Inc., Carbon/Emery Telecom, Inc., Central Utah Telephone, Inc., Hanksville Telecom, Inc., Manti Telephone Company, Skyline Telecom, UBET Telecom, Inc. And Qwest Corporation Joint Petition for Waiver of the Definition of "Study Area" Contained in the Part 36 Appendix-Glossary of the Commission's Rules; Petition for Waiver of Sections 61.41(c), 61.41(d) and 69.3(e)(11), CC Docket No. 96-45, Order, DA 01-507, rel. Feb. 27, 2001.

⁷ See generally 47 C.F.R. §§ 61.38 and 61.39.

⁸ See generally 47 C.F.R. § 61.41.

⁹ See 47 C.F.R. § 61.41(c)(2) and (3). This Rule provision is also known as the "All or Nothing" rule.

¹⁰ See 47 C.F.R. § 61.41(d). This Rule provision is also known as the "Permanent Choice" rule.

a price cap company.¹¹ As demonstrated below, application of the “All or Nothing” rule and, subsequently, the “Permanent Choice” rule to Saddleback would be inconsistent with the public interest. Accordingly, waiver of these rules, as they may be applied to Saddleback, is justified.¹²

The Commission’s decision to substitute price cap regulation for rate of return regulation was based on several factors and several presumptions. As a result, mandatory price cap regulation was applied only to the largest LECs in the country and specifically made optional for smaller LECs such as Saddleback with projected operating revenues of less than \$4 Million, approximately 2,700 access lines and serving an area with a density of less than 32 subscribers per square mile. The considerations which led the Commission to refrain from imposing price cap regulations on small, rural companies are equally applicable to this situation.¹³

The Commission implemented price caps as an incentive to encourage efficiencies and thereby promote competition within the industry. Price cap regulation, however, is applied on a mandatory basis only to the Regional Bell

¹¹ The Commission can take official notice of this fact as several similar petitions involving Qwest have previously been granted. See note 6 supra, and see In the Matter of Citizens Telecommunications Company of Idaho, Inc. and Qwest Corporation Joint Petition for Waiver of the Definition of “Study Area” Contained in the Part 36 Appendix-Glossary of the Commission’s Rules, Order, 15 FCC Rcd. 23663 (2000); In the Matter of Citizens Telecommunications Company of Colorado, Inc. and Qwest Corporation Joint Petition for Waiver of the Definition of “Study Area” Contained in the Part 36 Appendix-Glossary of the Commission’s Rules, Order, 16 FCC Rcd. 31 (2000).

¹² The Commission may exercise its discretion to waive a rule where particular facts would make strict compliance inconsistent with the “public interest.” Wait Radio v. FCC, 418 F.2d at 1159.

¹³ See notes 6 and 11 supra.

Operating Companies and GTE, in recognition that these companies share similarities which support price cap regulation -- geographic diversity, enormous subscriber bases, high activity levels in both regulated and nonregulated markets, and access to national markets. The Commission specifically targeted the appropriate companies to be regulated under the price cap system: "large, publicly-traded firms, that compete daily for sales of nonregulated products and services, in the financial markets, and in the labor markets."¹⁴ Thus, the Commission's regulatory framework was premised upon its application to companies with a diverse and broad scope of operation.

In refusing to impose price cap regulation universally upon all LECs, the Commission itself acknowledged the potential adverse effects of this regulatory structure when applied to smaller LECs. Noting that small and mid-size companies may have fewer opportunities to achieve cost savings and efficiencies, the Commission acknowledged that these companies are less viable candidates for price caps. In particular, the Commission recognized that a major component of its price cap regime, the productivity factor element, was potentially inapplicable to these types of companies.¹⁵ The Commission concluded that "evidence accumulated in [the price cap] proceeding casts doubt on whether all carriers below the largest

¹⁴ In the Matter of Policy and Rules Concerning Rates for Dominant Carriers, Second Report and Order, 5 FCC Rcd. 6786, 6790-91 ¶ 33 (1990) ("Price Cap Order"); see also Order on Reconsideration, 6 FCC Rcd. 2637 (1991), aff'd sub nom., National Rural Telecom Ass'n v. FCC, 988 F.2d 174 (D.C. Cir. 1993).

¹⁵ See Price Cap Order, 5 FCC Rcd. at 6799 ¶ 103.

eight in size can reasonably attain the productivity goal required by the price cap index.”¹⁶

Based on the Commission’s policy pronouncements noted above, Saddleback is exactly the type of small, rural carrier which the Commission previously found to be an inappropriate candidate for price cap regulation. As indicated, Saddleback is a small tribal local exchange company with less than \$4 Million in projected operating revenues, approximately 2,700 access lines and fewer than 32 subscribers per square mile. Accordingly, in balancing the benefits to be gained under price cap regulation against the costs which would be incurred by this small, rural LEC, it is clear that the public interest is better served by a grant of the instant waiver request.¹⁷

Finally, the Commission has indicated that its two primary concerns regarding price cap waivers are “cost-shifting between affiliates”¹⁸ and “gaming the

¹⁶ Id. ¶ 104.

¹⁷ Past Commission actions have shown that the Commission is sensitive to minimizing regulatory and administrative burdens upon small LECs. See In the Matter of Regulation of Small Telephone Companies, Report and Order, 2 FCC Rcd. 3811 (1987) (“Small Company Order”), In the Matter of Regulatory Reform for Local Exchange Carriers Subject to Rate of Return Regulation, Report and Order, 8 FCC Rcd. 4545, 4548 ¶ 21, 4556 ¶ 76, 4559-60 ¶ 96 (1993) (“Small Company Optional Incentive Order”), pets for recon. denied, pet. for clarification granted, Order on Reconsideration, 12 FCC Rcd. 2259 (1997).

¹⁸ See In the Matter of U S WEST Communications, Inc. and Eagle Telecommunications, Inc. Joint Petition for Waiver of the Definition of “Study Area” Contained in Part 36, Appendix-Glossary of the Commission’s Rules and Eagle Telecommunications, Inc. Petition for Waiver of Section 61.41(c) of the Commission’s Rules, Memorandum Opinion and Order, 10 FCC Rcd. 1771, 1775 ¶¶ 23-24 (footnote omitted) (1995) (“Eagle Decision”), aff’d on recon., Memorandum Opinion and Order on Reconsideration, 12 FCC Rcd. 4664 (1997).

system,” i.e., “building up a large rate base under rate of return regulation, then opting for price caps again and cutting its costs to an efficient level.”¹⁹ Neither situation is present here.

First, Saddleback, upon completion of this transaction, will operate the to-be-acquired service territory separate and apart from Qwest. This transaction culminated as a result of months of negotiations and is an “arms-length” transaction between competent, stand-alone organizations. No ownership, directorate, or management affiliation between Saddleback and Qwest will arise from this transaction. With regard to concerns about “gaming the system,” as operationally distinct entities, it is not possible for Qwest to gain any economic benefit from a grant of this requested waiver to Saddleback. Further, even assuming the possibility exists, the Commission would be in a position to investigate its concerns in a subsequent proceeding because, as the Commission has previously noted, any Qwest “reacquisition would require a second study area waiver.”²⁰

¹⁹ Id. ¶ 23 (footnote omitted). A similar set of criterion also was considered by the Commission’s Accounting and Audits Division. See In the Matter of U S WEST Communications, Inc., Copper Valley Telephone, Inc., Midvale Telephone Exchange, and Table Top Telephone Company Joint Petition for Waiver of the Definition of “Study Area” Contained in Part 36, Appendix-Glossary of the Commission’s Rules and Copper Valley Telephone, Inc., Midvale Telephone Exchange, and Table Top Telephone Company Petition for Waiver of Section 61.41(c) of the Commission’s Rules, Memorandum Opinion and Order, 10 FCC Rcd. 3373, 3376-77 ¶ 18 (1995) (“Copper Valley”), aff’d on recon., Memorandum Opinion and Order, DA 99-1845, rel. Sep. 9, 1999.

²⁰ Copper Valley, 10 FCC Rcd. at 3377 ¶ 20.

As demonstrated herein, Saddleback submits that the efficiencies created by the purchase and sale of this Arizona territory to Saddleback outweighs any concern over “gaming of the system.” Saddleback is not affiliated with Qwest and is not within the class of carrier deemed by the Commission to be a candidate for price cap regulation. Accordingly, in that the public interest would be best served by permitting Saddleback to operate the lines it is acquiring from Qwest under interstate rate of return regulation, Saddleback submits that a narrow waiver of the “All or Nothing” rule, and, subsequently, the “Permanent Choice” rule, is both appropriate and consistent with existing Commission policy.²¹

III. **WAIVER OF SECTION 69.3(e)(11), IF NECESSARY, AND AS APPROPRIATE, IS REQUESTED IN ORDER TO ALLOW SADDLEBACK TO UTILIZE THE NECA AS ITS TARIFF POOL ADMINISTRATOR**

Saddleback plans on utilizing the NECA as its interstate tariff administrator. While it is not altogether clear whether a waiver of Section 69.3(e)(11) is required for Saddleback arising from this transaction, Saddleback requests a waiver of Section 69.3(e)(11) to the extent that its “common line tariff participation” may be precluded until “the next annual access tariff filing effective date following consummation of the merger or acquisition transaction.”²²

A literal interpretation of Section 69.3(e)(11) would require Saddleback to file interstate tariffs, and assume the cost and administrative burden associated

²¹ Saddleback is not aware of any instance where the Commission has denied a request for a Price Cap waiver where, as here, a small LEC desires to remain under rate of return regulation. See, e.g., Eagle Decision, 10 FCC Rcd. 1771; Copper Valley, 10 FCC Rcd. 3373.

²² 47 C.F.R. § 69.3(e)(11).

therewith, until July 1, 2002. This would be required due to the fact that July 1, 2001 is the “next” effective date of NECA’s “annual access tariff filing,” and this transaction is unlikely to close prior to July 1, 2001. Saddleback submits that such a result is clearly not in the public interest.

The Commission established the NECA, in part, to ensure that excessive tariffing administrative burdens would not be imposed upon small LECs such as Saddleback.²³ This burden should not be imposed upon Saddleback merely because of the timing of this proposed transaction. Rather, resources should be concentrated on the provision of high-quality telecommunications services to the affected rural areas.²⁴ Moreover, the financial impact upon the NECA pools that Saddleback seeks to join is anticipated to be minimal.²⁵

Accordingly, since this transaction will not close prior to the time required for Saddleback to provide the NECA with the proper notice, and in light of the administrative burden that would be placed upon Saddleback in the absence of this request, Saddleback respectfully requests a waiver of Section 69.3(e)(11) to the extent necessary for it to become a NECA Issuing Carrier and to participate in the NECA pools upon the date of the closing of this acquisition.

²³ See 47 C.F.R. § 69.603.

²⁴ See generally, Small Company Order, 2 FCC Rcd. 3811; see also Small Company Optional Incentive Order, 8 FCC Rcd. 4545.

²⁵ The approximate 2,700 access lines in this transaction represent an increase of only .02% of the approximate 12.4 million access lines within the NECA common line pool that the NECA reported in its 2000 Access Charge filing.

IV. THE COMMISSION'S STUDY AREA FREEZE SHOULD BE WAIVED

Part 36 of the Commission's Rules "freezes" the definition of "study area" to the boundaries which were in existence on November 15, 1984.²⁶ This "freeze" was due, in part, to the Commission's concern over the level of interstate cost recovery by LECs from the Universal Service Fund ("USF"): "[t]he Commission took that action, in part, to ensure that LECs do not set up high cost exchanges within their existing service territories as separate study areas to maximize high cost support."²⁷ At the same time, the Commission also recognized that its rules were not aimed at discouraging "the acquisition of high cost exchanges or the expansion of service to cover high cost areas."²⁸ Indeed, the Commission's Common Carrier Bureau ("Bureau") has implemented this policy decision by holding that changes in study areas that "result from the purchase or sale of exchanges in arms-length transactions" "do not conflict" with the concerns prompting the study area freeze.²⁹ The Commission has also established a three-prong test for deciding whether study

²⁶ See 47 C.F.R. Part 36, Appendix-Glossary.

²⁷ Eagle Decision, 10 FCC Rcd. at 1773 ¶ 10, citing In the Matter of MTS and WATS Market Structure, Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board, CC Docket Nos. 78-72 and 80-286, 50 Fed. Reg. 939, rel. Jan. 8, 1985.

²⁸ In the Matter of MTS and WATS Market Structure, Amendment of Part 67 of the Commission's Rules and Establishment of a Joint Board, CC Docket Nos. 78-72 and 80-286, 49 Fed. Reg. 48325, 48337 ¶ 65, rel. Dec. 12, 1984.

²⁹ In the Matter of Contel of the West Petition for Waiver of Section 36.125(f), Sections 36.154(e)(1) and (2), and the Definition of "Study Area" contained in Part 36, Appendix-Glossary, of the Commission's Rules, Oregon-Idaho Utilities, Inc., Petition for Waiver of the Definition of "Study Area" contained in Part 36, Appendix-Glossary, of the Commission's Rules, Memorandum Opinion and Order, 5 FCC Rcd. 4570, 4571 ¶ 9 (1990) (emphasis added).

area waivers should be granted. The Commission should approve such waiver requests if it determines:

[F]irst, that the change will not affect adversely the USF support program;

[S]econd, that the state commission having regulatory authority does not object to the change; and

[F]inally, that the public interest supports grant of the waiver.³⁰

As demonstrated herein, the overall concern prompting the “freeze” in study areas is not an issue in this transaction, and the Commission’s three-prong test will be satisfied. Accordingly, Qwest and Saddleback respectfully request that the Commission grant the study area waiver permitting: (1) Qwest to remove the Salt River territory from its Arizona study area; and (2) the affiliation of this territory with Saddleback’s newly created Arizona study area.

A. The USF Impact Arising From This Transaction

The proposed transaction would not adversely impact the USF. As an initial matter, Section 54.305 of the Commission’s rules provides that carriers purchasing high cost exchanges receive the same level of support per line as the seller received prior to the sale.³¹ Therefore absent a Commission waiver of this rule, or some other action modifying the rule, the transfer will result in no impact on the USF.

Saddleback may, in a separate filing with the Commission, seek a waiver of 47 C.F.R. Section 54.305 in order to enable it to improve telecommunications services to the Salt River community. In the event that such a waiver were granted

³⁰ See Eagle Decision, 10 FCC Rcd. at 1772 ¶ 5 (footnotes omitted).

by the Commission, there still would not be a significant impact on the USF. The portion of the exchange in question serves a small population within the Salt River community, so that any waiver of Section 54.305 would represent a correspondingly limited increase in universal service funding. As a general matter, the Petitioners calculate that Saddleback would receive an average additional \$2,400,000 in high-cost funding over its first three years of operation above what it would receive absent a waiver of Section 54.305. Saddleback certifies that this change in universal service funding would represent far less than one percent of the total USF and, therefore, would not constitute a significant impact on the USF or threaten unwarranted growth of the USF.³² Thus, with or without a possible waiver of Section 54.305 of the Commission's rules the proposed transaction will have no significant or adverse impact on the USF.

**B. The Arizona Corporation Commission Does Not Object
To The Proposed Change In Study Area Boundaries**

Qwest has filed with the Arizona Corporation Commission ("ACC") a petition seeking the ACC's approval of the proposed transfer of the Salt River territory to Saddleback.³³ Qwest will supply the Commission with a copy of the ACC's action on

³¹ 47 C.F.R. § 54.305.

³² See Eagle Decision, 10 FCC Rcd. at 1774.

³³ In the Matter of the Application of Qwest Corporation for Approval of the Sale and Transfer of Certain Telephone Facilities and the Deletion of the Salt River Pima Indian Reservation from its Service Territory, filed Apr. 20, 2001.

the petition as soon as it is available.³⁴ On June 11, 2001, the ACC issued a letter indicating that it does not object to the proposed change in study area boundaries.³⁵

C. The Public Interest Will Be Served By Grant Of
The "Study Area" Waivers Requested Herein

Grant of this petition will provide the Salt River tribe with the opportunity to provide improved, state-of-the-art telecommunications services to its own people. The Salt River tribal government is unique in its understanding and ability to serve the needs of the residents of the Salt River community. Thus, the Tribe is in the best position to serve the public interest by ensuring that improved services are available to the Tribe and its members.

A failure by the Commission to grant this waiver request would harm the public. If the Salt River community remains in Qwest's Arizona study area, future studies would reflect inaccurately the interstate costs incurred by Saddleback in serving its rural customers. Without a change to the study area boundaries, Saddleback's customers would be considered to be Qwest subscribers for study area purposes. As a result, Saddleback would be required to charge rates based on inaccurate costs. This result is inconsistent with the Commission's principle of cost causation which long has been a hallmark of its cost recovery policy. Without the requested waivers, rural Native Americans will be denied the benefit of the

³⁴ Because the ACC does not object to the study area waiver, Qwest and Saddleback request that the Commission expedite consideration of this Petition pending receipt of a final ACC action.

³⁵ A copy of this letter is attached hereto as Appendix A.

Commission's universal service policies.³⁶ Thus, the proposed sale serves the public interest.

Moreover, the Commission's responsibilities under the Federal Trust Doctrine further support the grant of the requested waivers. As a result of the unique government-to-government relationship between the Tribes and the Federal Government, the United States, and its agencies, have a fiduciary duty to protect the interests of the various tribes.³⁷ This principle of Indian law "must apply with equal force in the area of telecommunications."³⁸ The Commission has also explicitly recognized its trust responsibility and the rights of tribal governments to "set their own communications priorities and goals for the welfare of their membership."³⁹ Of particular relevance to the issue of waiver of Commission rules, the Commission adopted the following goal:

The Commission will endeavor to work with Indian Tribes on a government-to-government basis consistent with the principles of Tribal self-governance to ensure, through its regulations and policy initiatives, and consistent with Section 1 of the Communications Act of 1934, that Indian Tribes have adequate access to telecommunications services.⁴⁰

³⁶ The Commission has recognized that study areas defined by tribal boundaries might be necessary to ensure the appropriate targeting of high-cost funding. See Tribal Lands FNPRM, 14 FCC Rcd. 21177.

³⁷ See, e.g., United States v. Creek Nation, 295 U.S. 109-10 (Governmental power to manage and control Indian property and affairs is not absolute, but is subject to limitation inherent in a guardianship).

³⁸ Tribal Lands FNPRM at 21195-96 ¶ 38.

³⁹ Policy Statement, 20 Comm. Reg. (P&F) at 1318.

⁴⁰ Id.

Thus, federal Indian law and corresponding Commission policy supports the grant of the requested waivers.

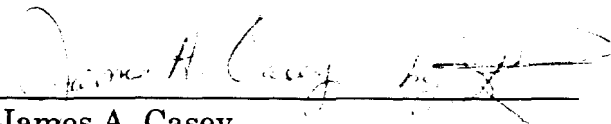
In light of the above, Qwest and Saddleback believe that the public interest would best be served by the granting of the study area waivers requested herein.

V. CONCLUSION

For the reasons stated herein, Qwest and Saddleback respectfully request that the Commission expeditiously review and approve this Petition. This Petition raises no new issues of law, is supported by Commission precedent and the facts involved in this Petition clearly demonstrate that the public interest will be served by such an expeditious grant. Qwest and Saddleback respectfully submit that an expeditious grant of this Petition will serve the public interest by affording the residents and business customers of these rural exchanges the benefits of the planned transfers.

Respectfully submitted,

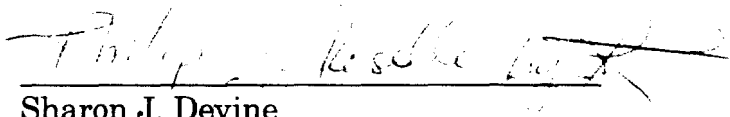
SADDLEBACK COMMUNICATIONS

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June 12, 2001

APPENDIX A
STATE NON-OBJECTION LETTER

WILLIAM A. MUNDELL
CHAIRMAN
JIM IRVIN
COMMISSIONER
MARC SPITZER
COMMISSIONER



BRIAN C. McNEIL
EXECUTIVE SECRETARY

ARIZONA CORPORATION COMMISSION

June 11, 2001

Katherine Schroder
Chief, Accounting Policy Division
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C.

Re: Request for Study Area Waiver

Dear Ms. Schroder:

The Arizona Corporation Commission (the "ACC") has pending before it an application for the sale of Qwest Corporation's ("Qwest") facilities currently serving the Salt River Pima Indian Reservation. Qwest is selling these facilities to Saddleback Communications ("Saddleback"). This letter is being submitted as part of a petition for waiver of study area boundaries which is being filed with the FCC by Qwest and Saddleback.

Pursuant to the Common Carrier Bureau's Order issued on June 21, 1995 in Dockets DA 95-1043 and AAD 95-78, local exchange carriers must file with the FCC, as part of any petition for waiver of a study area boundary, a State certificate or other valid document that demonstrates that the affected State Commission does not object to a proposed reconfiguration of the study area boundaries.

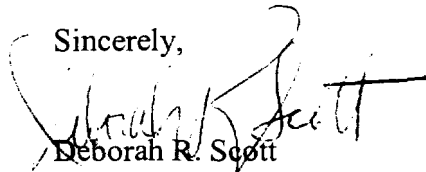
While the ACC has not made a determination on whether the transaction is in the public interest nor has it issued a final order approving the transaction, Saddleback desires to proceed with the study area waiver in order to expedite the closing of the transaction with Qwest, should the ACC ultimately grant approval. The ACC submits this letter without prejudice to its decision-making process in this Docket, in order to expedite the FCC's initiating its review for request for a study area waiver.

With the FCC's understanding that the ACC has not yet completed its review of or made a final determination on the pending application, the ACC does not object to the FCC's commencing its review of the proposed study area boundary waiver. Should the ACC ultimately approve the transfer, the ACC will at that time notify the FCC that the ACC does not object to the requested study area waiver. In submitting this letter, the ACC reserves the right to take any necessary steps to assure that if the waiver is granted, it will not adversely affect Saddleback's customers.

Ms. Katherine Schroder
June 11, 2001
Page Two

The ACC intends that this letter, and its subsequent follow-up letter upon approval of the transaction, be accepted as compliance with the requirements set forth in the Common Carrier Bureau's Order issued on June 21, 1995 (DA 95-1043 and AAD 95-78).

Sincerely,

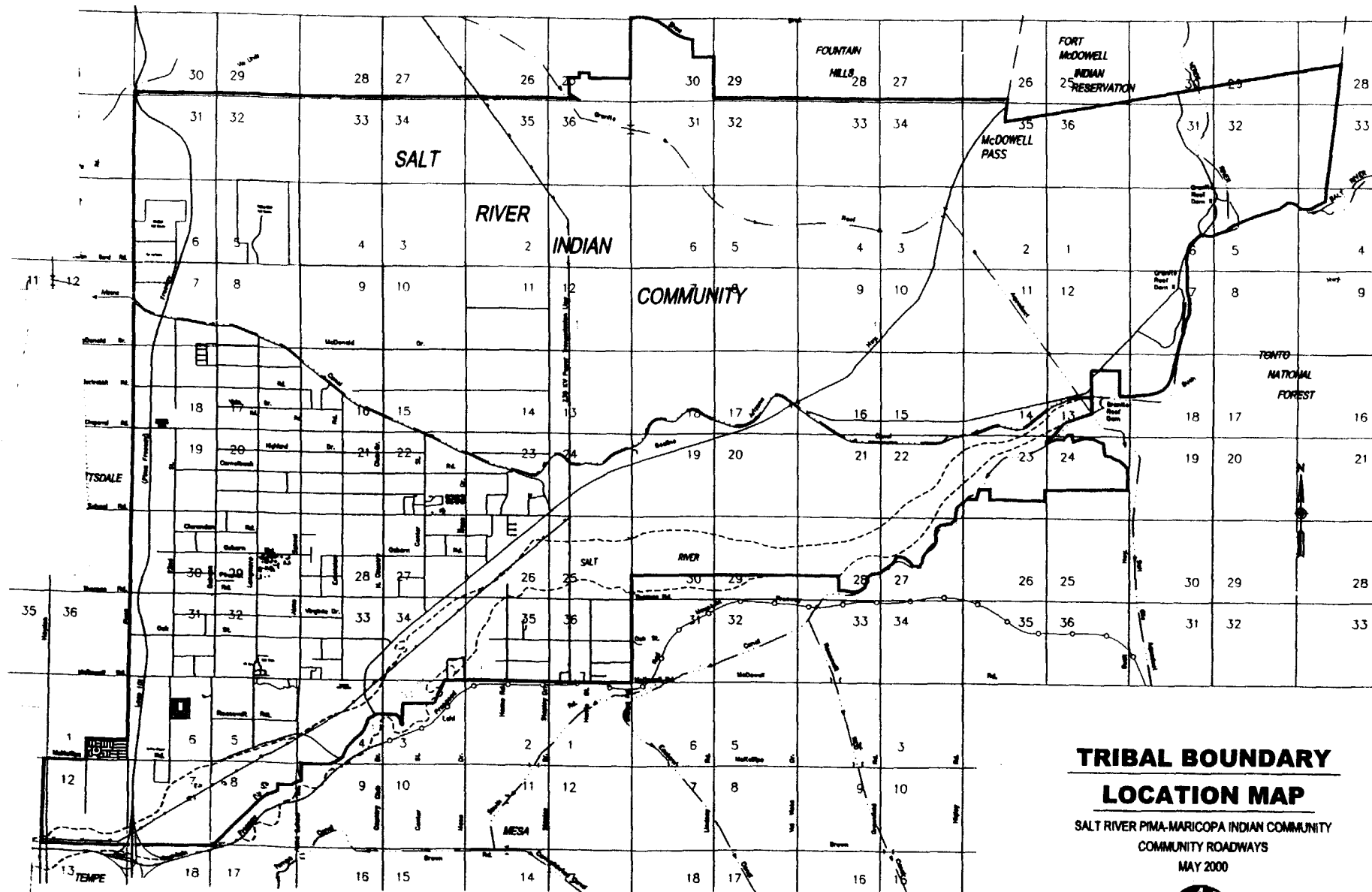


Deborah R. Scott
Director, Utilities Division

DRS:mi

APPENDIX B

MAP



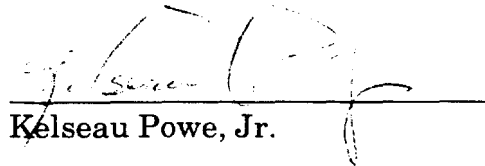
TRIBAL BOUNDARY LOCATION MAP

SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY
COMMUNITY ROADWAYS
MAY 2000



CERTIFICATE OF SERVICE

I, Kelseau Powe, Jr., do hereby certify that on the 12th day of June, 2001, I have caused a copy of the foregoing **JOINT PETITION FOR EXPEDITED WAIVERS** to be served, via hand delivery (marked with an asterisk) or first class United States mail, postage prepaid, upon the persons listed on the attached service list.


Kelseau Powe, Jr.

***Dorothy T. Attwood**
Federal Communications Commission
Room 5-C345
Portals II
445 12th Street, S.W.
Washington, DC 20554

***Adrian Wright**
Federal Communications Commission
Room 5-B540
Portals II
445 12th Street, S.W.
Washington, DC 20554

***Katherine Schroder**
Federal Communications Commission
Room 5-A426
Portals II
445 12th Street, S.W.
Washington, DC 20554

***Jane E. Jackson**
Federal Communications Commission
5th Floor
Portals II
445 12th Street, S.W.
Washington, DC 20554

***Sheryl Todd**
Federal Communications Commission
Room 5-B540
Portals II
445 12th Street, S.W.
Washington, DC 20554

***Sharon Webber**
Federal Communications Commission
5th Floor
Portals II
445 12th Street, S.W.
Washington, DC 20554

***Kenneth P. Moran**
Federal Communications Commission
Room 6-B201
Portals II
445 12th Street, S.W.
Washington, DC 20554

James A. Casey.....Saddleback
10852 Oak Green Court
Burke, VA 22015

***International Transcription**
Services, Inc.
1231 20th Street, N.W.
Washington, DC 20036

THIS CHECK IS VOID WITHOUT A BLUE & GREEN BACKGROUND AND AN ARTIFICIAL WATERMARK PATTERN ON THE BACK - HOLD AT ANGLE TO VIEW



QWEST
555 17TH STREET
DENVER, CO 80202

BANK OF AMERICA
BANK OF AMERICA NA
ATLANTA, GEORGIA

CHECK NO.: 02050628

DATE: 05/29/2001

64-1278
811

VOID AFTER 90 DAYS

\$6,220.00

PAY: SIX THOUSAND TWO HUNDRED TWENTY AND 00/100 DOLLARS

To The
Order
Of

FEDERAL COMMUNICATIONS COMM.
ACCOUNTING & AUDITS, COMMON
CARRIER PO BOX 358140
PITTSBURGH PA 15251-5140




Authorized Signature

SIGNATURE HAS A COLORED BACKGROUND

⑈0002050628⑈ ⑆061112788⑆3299994808⑈

READ INSTRUCTIONS CAREFULLY
BEFORE PROCEEDING

FEDERAL COMMUNICATIONS COMMISSION
REMITTANCE ADVICE

Approved by OMB
3060-0589
Page No 1 of 1

(1) LOCKBOX #

358140

SPECIAL USE

FCC USE ONLY

SECTION A - PAYER INFORMATION

(2) PAYER NAME (if paying by credit card, enter name exactly as it appears on your card)

Qwest Corporation

(3) TOTAL AMOUNT PAID (U.S. Dollars and cents)

6220.00

(4) STREET ADDRESS LINE NO. 1

Suite 700

(5) STREET ADDRESS LINE NO. 2

1020 19th Street NW

(6) CITY

Washington

(7) STATE

DC

(8) ZIP CODE

20036

(9) DAYTIME TELEPHONE NUMBER (include area code)

(303) 896-3197

(10) COUNTRY CODE (if not in U.S.A.)

FCC REGISTRATION NUMBER (FRN) AND TAX IDENTIFICATION NUMBER (TIN) REQUIRED

(11) PAYER (FRN)

0003-7467-57

(12) PAYER (TIN)

840273800

IF PAYER NAME AND THE APPLICANT NAME ARE DIFFERENT, COMPLETE SECTION B
IF MORE THAN ONE APPLICANT, USE CONTINUATION SHEETS (FORM 159-C)

(13) APPLICANT NAME

(14) STREET ADDRESS LINE NO. 1

(15) STREET ADDRESS LINE NO. 2

(16) CITY

(17) STATE

(18) ZIP CODE

(19) DAYTIME TELEPHONE NUMBER (include area code)

(20) COUNTRY CODE (if not in U.S.A.)

FCC REGISTRATION NUMBER (FRN) AND TAX IDENTIFICATION NUMBER (TIN) REQUIRED

(21) APPLICANT (FRN)

(22) APPLICANT (TIN)

COMPLETE SECTION C FOR EACH SERVICE, IF MORE BOXES ARE NEEDED, USE CONTINUATION SHEET

(23A) CALL SIGN/OTHER ID

(24A) PAYMENT TYPE CODE

(25A) QUANTITY

BEA

1

(26A) FEE DUE FOR (PTC)

6220.00

(27A) TOTAL FEE

6220.00

FCC USE ONLY

(28A) FCC CODE 1

(29A) FCC CODE 2

(23B) CALL SIGN/OTHER ID

(24B) PAYMENT TYPE CODE

(25B) QUANTITY

(26B) FEE DUE FOR (PTC)

(27B) TOTAL FEE

FCC USE ONLY

(28B) FCC CODE 1

(29B) FCC CODE 2

SECTION D - CERTIFICATION

(30) CERTIFICATION STATEMENT

I, Richard Grizzle, certify under penalty of perjury that the foregoing and supporting information is true and correct to the best of my knowledge, information and belief.

SIGNATURE Richard Grizzle

DATE 2/21/01

SECTION E - CREDIT CARD PAYMENT INFORMATION

(31)

MASTERCARD/VISA ACCOUNT NUMBER:

EXPIRATION
DATE:

☐ MASTERCARD

☐ VISA

I hereby authorize the FCC to charge my VISA or MASTERCARD for the service(s)/authorization herein described.

SIGNATURE _____ DATE _____

READ INSTRUCTIONS CAREFULLY
BEFORE PROCEEDING

FEDERAL COMMUNICATIONS COMMISSION
REMITTANCE ADVICE

Approved by OMB
3060-0589
Page No 1 of 1

(1) LOCKBOX #

358140

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6220.00

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1020 19th Street NW

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Washington

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DC

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20036

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(11) PAYER (FRN)

0003-7467-57

(12) PAYER (TIN)

840273800

IF PAYER NAME AND THE APPLICANT NAME ARE DIFFERENT, COMPLETE SECTION B
IF MORE THAN ONE APPLICANT, USE CONTINUATION SHEETS (FORM 159-C)

(13) APPLICANT NAME

(14) STREET ADDRESS LINE NO. 1

(15) STREET ADDRESS LINE NO. 2

(16) CITY

(17) STATE

(18) ZIP CODE

(19) DAYTIME TELEPHONE NUMBER (include area code)

(20) COUNTRY CODE (if not in U.S.A.)

FCC REGISTRATION NUMBER (FRN) AND TAX IDENTIFICATION NUMBER (TIN) REQUIRED

(21) APPLICANT (FRN)

(22) APPLICANT (TIN)

COMPLETE SECTION C FOR EACH SERVICE, IF MORE BOXES ARE NEEDED, USE CONTINUATION SHEET

(23A) CALL SIGN/OTHER ID

(24A) PAYMENT TYPE CODE

(25A) QUANTITY

BEA

1

(26A) FEE DUE FOR (PTC)

6220.00

(27A) TOTAL FEE

6220.00

FCC USE ONLY

(28A) FCC CODE 1

(29A) FCC CODE 2

(23B) CALL SIGN/OTHER ID

(24B) PAYMENT TYPE CODE

(25B) QUANTITY

(26B) FEE DUE FOR (PTC)

(27B) TOTAL FEE

FCC USE ONLY

(28B) FCC CODE 1

(29B) FCC CODE 2

SECTION D - CERTIFICATION

(30) CERTIFICATION STATEMENT

I, Richard Grezler, certify under penalty of perjury that the foregoing and supporting information is true and correct to the best of my knowledge, information and belief.

SIGNATURE Richard Grezler

DATE 5/31/01

SECTION E - CREDIT CARD PAYMENT INFORMATION

(31)

MASTERCARD/VISA ACCOUNT NUMBER:

EXPIRATION
DATE:



MASTERCARD



VISA

I hereby authorize the FCC to charge my VISA or MASTERCARD for the service(s)/authorization herein described.

SIGNATURE _____

DATE _____



Capital Filing Specialists, LLC

860

FCC Pittsburgh Shuttle

1999 M Street NW, Suite 740, Washington, DC 20036 Phone: 202.223.5360 Fax: 202.293.0287

Date: 06/12/01

Client Reference: 0474

Description of Filing: Pet. for Waiver - Saddleback

Application ☐

Report ☐

Other ☒ Waiver

Name of Applicant(s) Qwest/Saddleback

FCC Form Number No. 159

Number of Copies 4 + Original

FCC Box Number No. 358140

Copy for Date Stamp 1

Facilities Specified Mellon Bank

Your Firm's Name: Qwest
Street Address: 1020 19th St. N.W. Suite 700
City, State and Zip: Wash DC 20036
Sender's Name: Kellean Rowe

Your Account Number _____

Certification of Pick Up

I hereby certify that the FCC Application/Report/Other described above was picked up by me
on _____ day of _____ 200 ____.

By: _____ Date: _____ Time: _____

Certification of Delivery

I hereby certify that the FCC Application/Report/Other described above was filed and the accompanying fee
tendered to the Mellon Bank in Pittsburgh, PA, on _____ day of _____ 200 ____.

By: _____ Date: _____ Time: _____